

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
(MIAMI DIVISION)

MICHELLE CHERRY AND
VICTOR RODRIGUEZ

CIVIL ACTION NO.:
1:23-CV-23477-JEM

Plaintiffs,

vs.

BRITISH AIRWAYS PLC,

Defendant.

ANSWER OF DEFENDANT BRITISH AIRWAYS

Defendant BRITISH AIRWAYS PLC (hereinafter “British Airways” or “BA”), by and through its attorneys, Condon & Forsyth LLP, for its Answer to the Complaint of Plaintiffs, MICHELLE CHERRY and VICTOR RODRIGUEZ (“Plaintiffs”), alleges upon information and belief:

AS TO THE INTRODUCTION

1. British Airways denies the allegations contained in paragraph 1 of Plaintiffs’ Complaint.

2. British Airways lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of Plaintiffs’ Complaint and, on this basis, denies the allegations, except admits that British Airways is aware of Michelle Cherry’s identity.

3. British Airways lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of Plaintiffs’ Complaint and, on this basis, denies the allegations, except admits that British Airways is aware of Victor Rodriguez’s identity.

4. British Airways denies the allegations contained in paragraph 4 of Plaintiffs’ Complaint, except admits that British Airways is a foreign corporation duly organized and

existing under the laws of the United Kingdom with its principal place of business in the United Kingdom and admits that British Airways does business in the United States, Florida.

AS TO JURISDICTION AND VENUE

5. British Airways denies the allegations contained in paragraph 5 of Plaintiffs' Complaint.

6. British Airways denies the allegations contained in paragraph 6 of Plaintiffs' Complaint.

7. British Airways lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of Plaintiffs' Complaint and, on this basis, denies the allegations, except admits that British Airways is aware of Michelle Cherry's identity.

8. British Airways lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of Plaintiffs' Complaint and, on this basis, denies the allegations, except admits that British Airways is aware of Victor Rodriguez's identity.

9. British Airways denies the allegations contained in paragraph 9 of Plaintiffs' Complaint, except admits that British Airways is a foreign corporation duly organized and existing under the laws of the United Kingdom with its principal place of business in the United Kingdom and admits that British Airways does business in the United States, Florida.

10. British Airways admits the allegations in paragraph 10 of Plaintiffs' Complaint.

11. British Airways denies the allegations contained in paragraph 11 of Plaintiffs' Complaint.

12. British Airways denies the allegations contained in paragraph 12 of Plaintiffs' Complaint.

13. British Airways denies the allegations contained in paragraph 13 of Plaintiffs' Complaint.

AS TO GENERAL ALLEGATIONS

14. British Airways denies the allegations contained in the second paragraph enumerated as Paragraph 9 in Plaintiffs' Complaint, except admits that Plaintiffs held tickets to travel on British Airways flight BA 1455 from Edinburgh, Scotland, to London, England, and on British Airways flight BA 3179 from London, England, to Madrid, Spain, on February 11, 2023.

15. British Airways lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second paragraph enumerated as Paragraph 10 in Plaintiffs' Complaint and, on this basis, denies the allegations.

16. British Airways denies the allegations contained in the second paragraph enumerated as Paragraph 11 in Plaintiffs' Complaint and, on this basis, denies the allegations.

17. British Airways lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second paragraph enumerated as Paragraph 12 in Plaintiffs' Complaint and, on this basis, denies the allegations.

18. British Airways denies the allegations in the second paragraph enumerated as Paragraph 13 in Plaintiffs' Complaint.

AS TO COUNT I

NEGLIGENCE

19. Answering the allegations contained in the paragraph identified as Paragraph 14 of Plaintiffs' Complaint, British Airways repeats, reiterates and re-alleges each and every answer contained in paragraphs 1 through 18, inclusive, of this answer with the same force and effect as if set forth herein in full.

20. British Airways denies the allegations contained in the paragraph identified as Paragraph 15 of Plaintiffs' Complaint.

21. British Airways denies the allegations contained in the paragraph identified as Paragraph 16 in Plaintiffs' Complaint.

22. British Airways denies the allegations contained in the paragraph identified as Paragraph 17 of Plaintiffs' Complaint.

AS TO COUNT II

VIOLATION OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

Answering the unnumbered paragraph in Count II of the Complaint, British Airways repeats, reiterates and re-alleges each and every answer contained in paragraphs 1 through 22, inclusive, of this answer with the same force and effect as if set forth herein in full.

23. British Airways denies the allegations contained in the paragraph identified as Paragraph 18 of Plaintiffs' Complaint.

24. British Airways denies the allegations contained in the paragraph identified as Paragraph 19 of Plaintiffs' Complaint.

25. British Airways denies the allegations contained in the paragraph identified as Paragraph 20 of Plaintiffs' Complaint.

26. British Airways denies the allegations contained in the paragraph identified as Paragraph 21 of Plaintiffs' Complaint.

27. British Airways denies the allegations contained in the paragraph identified as Paragraph 22 of Plaintiffs' Complaint.

28. British Airways denies the allegations contained in the paragraph identified as Paragraph 23 of Plaintiffs' Complaint.

29. British Airways denies the allegations contained in the paragraph identified as Paragraph 24 of Plaintiffs' Complaint.

30. British Airways denies the allegations contained in the paragraph identified as Paragraph 25 of Plaintiffs' Complaint.

AFFIRMATIVE DEFENSES

**FIRST AFFIRMATIVE DEFENSE
TO EACH AND EVERY CLAIM FOR RELIEF**

31. This Court lacks personal jurisdiction over British Airways.

**SECOND AFFIRMATIVE DEFENSE
TO EACH AND EVERY CLAIM FOR RELIEF**

32. Plaintiffs' Complaint is barred on the grounds that it fails to state a claim upon which relief can be granted.

**THIRD AFFIRMATIVE DEFENSE
TO EACH AND EVERY CLAIM FOR RELIEF**

33. The transportation out of which the subject matter of this action arose was "international carriage" within the meaning of the Convention for the Unification of Certain Rules for International Carriage by Air, Done at Montreal on 28 May 1999 ("Montreal Convention"), reprinted in S. Treaty Doc. 106-45, CCH Av. L. Rep. ¶ 27,400-59, 1999 WL 33292734, and the rights of the parties to this action are governed exclusively by the provisions of that Montreal Convention.

34. Pursuant to the relevant Articles of the Montreal Convention, British Airways is not liable to Plaintiffs, or, in the alternative, its liability is limited.

**FOURTH AFFIRMATIVE DEFENSE
TO EACH AND EVERY CLAIM FOR RELIEF**

35. Pursuant to Article 29 of the Montreal Convention, Plaintiffs' claims are exclusively governed by the Montreal Convention and, therefore, are preempted by it.

**FIFTH AFFIRMATIVE DEFENSE
TO EACH AND EVERY CLAIM FOR RELIEF**

36. Pursuant to Article 19 of the Montreal Convention, British Airways is not liable to the extent that it and its servants, employees, and agents took all measures that could reasonably

be required to avoid the damages alleged by Plaintiffs or that it was impossible for British Airways and its servants, employees, and agents to take such measures.

**SIXTH AFFIRMATIVE DEFENSE
TO EACH AND EVERY CLAIM FOR RELIEF**

37. Pursuant to Article 22 of the Montreal Convention, the liability of defendant British Airways, if any, is limited to the amount of 1,288 Special Drawing Rights (SDRs) (approximately \$1,740).

**SEVENTH AFFIRMATIVE DEFENSE
TO EACH AND EVERY CLAIM FOR RELIEF**

38. This Court lacks subject matter (treaty) jurisdiction over the Plaintiffs' claims pursuant to Article 33 of the Montreal Convention.

**EIGHTH AFFIRMATIVE DEFENSE
TO EACH AND EVERY CLAIM FOR RELIEF**

39. British Airways' liability, if any, with respect to Plaintiffs' alleged damages is further limited or excluded in accordance with its conditions of carriage, conditions of contract, and tariffs.

**NINTH AFFIRMATIVE DEFENSE
TO EACH AND EVERY CLAIM FOR RELIEF**

40. Plaintiffs' damages, if any, should be barred or limited as a result of the failure of Plaintiffs to take reasonable steps to mitigate their damages.

**TENTH AFFIRMATIVE DEFENSE
TO EACH AND EVERY CLAIM FOR RELIEF**

41. If Plaintiffs have received remuneration or compensation for some or all of their claimed economic losses, British Airways is entitled to have Plaintiffs' award, if any, reduced by the amount of said remuneration or compensation.

WHEREFORE, defendant BRITISH AIRWAYS PLC. demands judgment dismissing the Complaint in its entirety or, alternatively, judgment limiting its liability as aforementioned,

together with costs, disbursements and such other and further relief as this Court deems just and proper.

Dated: September 18, 2023

CONDON & FORSYTH LLP

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- and -

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Attorneys for Defendant
BRITISH AIRWAYS PLC

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CERTIFICATE OF SERVICE

I hereby certify that this **ANSWER OF DEFENDANT BRITISH AIRWAYS** was served via U.S. Mail on September 18, 2023, upon: MICHELLE CHERRY AND VICTOR RODRIGUEZ, 1317 Edgewater Dr., Orlando, FL 32804, v1rodriguez@bellsouth.net.

/s/ Lisa B. Heller
Lisa B. Heller, Esq.